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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,891	01/11/2002	James Martucci	EIS-5799 (1417G P 570)	6265

7590

02/28/2003

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EXAMINER

GHAFOORIAN, ROZ

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,891

Applicant(s)

MARTUCCI ET AL.

Examiner

Roz Ghafoorian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 17, 24, 28, 30, 31, 37 and 58-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-23, 25-27, 29, 32-36 and 38-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Claims 59-61 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method of use, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Applicant's election **with** traverse of Species A in Paper No. 6 is acknowledged. The applicant has falsely assumed that no extra search needs to be conducted for the additional species. The additional species have extra limitations, which require more consideration and search. Hence the rejection is proper and is retained.

Closer examination of the claims the examiner will not examine claim 17, 24, 30-31 because they read on figure 2 as described in the specification. Claims 28, 37 will also not be examined due to the description given in the specification on page 16 they are related to another embodiment.

Information Disclosure Statement

2. The information disclosure statement filed 5-30-2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5, 9-11, 13-16, 18, 25-27, 29, 32-33, 35, 38, 42-52, are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Pub No. US 2001/0044731 A1 to Coffman et al.

Coffman teaches a medial transaction carrier (medical devise) in communication with caregiver, patient and mediation via bar code labels or tags. The communications between the various components of the system using wireless technology, compunction within the wireless network may utilize radio frequency electromagnetic radiation, infrared radiation or other means for accomplishing wireless communication between network elements. Coffman's invention provides for closing the loop on drug delivery and validation that the right treatment has been given to the right patient. (Paragraphs 0019-0022 and 0027)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4,6-8, 12, 19-23, 34, 36, 39,40-41,53 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Pub No. US 2001/0044731 A1 to Coffman et al as applied to claims 1, 16, 29,50 above, and further in view of US Patent No.6021392 to Lester et al.

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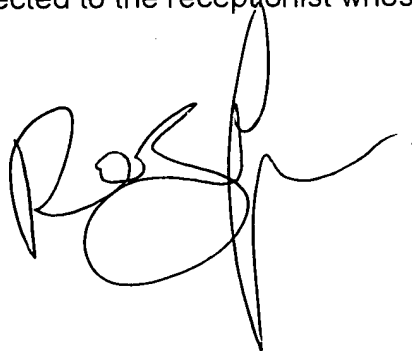
As mentioned above Coffman teaches the invention except for a two dimensional bar code. Lester teaches a two dimensional bar code.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for Coffman to have used a two dimensional bar code instead of a one dimensional bar code because according to Lester a two dimensional bar code is preferable because they contain more information in the same amount of space as one dimensional bar code. (Col.7, lines 50-55)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

A handwritten signature in black ink, appearing to read 'Roz' or 'R. Ghafoorian', with a large, stylized flourish extending from the end.

RG
February 24, 2003

MICHAEL J. HAYES
PRIMARY EXAMINER